



IN THE MATTER OF:

Respondent.

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CHARGE NO: 2001SF0078
EEOC NO: 21BA002918
ALS NO: S-11679

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). On December 3, 2002, an Order was entered which noted that Complainant had failed to attend a telephone status conference and required that Complainant supply the Commission with a current telephone number where he could be reached during business hours. Complainant failed to comply with the December 3, 2002 Order and has not otherwise provided the Commission with any information as to where he can be reached.

Based on the record in this matter, I make the following findings of fact:

1. On August 4, 2000, Complainant filed a Charge of Discrimination, alleging on his own behalf that he was the victim of sex discrimination when Respondent failed to hire Complainant for a curbside waiter position at Respondent's drive-in restaurant.
2. On December 13, 2001, the Department of Human Rights filed a Complaint on behalf of Complainant, alleging that Respondent discriminated against Complainant on the basis of his sex when it refused to hire Complainant as a curbside waiter.

3. On February 13, 2002, Respondent filed its Verified Answer to the Complaint.

4. On February 14, 2002, an Order was entered which established a discovery schedule and set the matter for a telephone status conference.

5. A clerk from the Commission was unable to reach Complainant on the date of the scheduled telephone conference call, and Complainant was thereafter directed to provide the Commission with a current telephone number where he could be reached during business hours.

6. On July 11, 2002, Complainant supplied the Commission with a current telephone number.

7. On August 16, 2002, the parties participated in a telephone conference call, during which Respondent requested additional discovery. A new discovery schedule was established, and the parties were directed to participate in another status telephone conference on December 3, 2002.

8. On December 3, 2002, the Commission attempted to contact Complainant for the telephone status conference and discovered that the telephone number provided by Complainant was no longer in service. On the same day, an Order was entered which directed Complainant to provide a current telephone number where he could be reached during business hours and specifically cautioned Complainant that the failure to provide a current telephone number by December 13, 2002 could result in the entry of an order recommending that this case be dismissed with prejudice for failure to prosecute the matter.

9. Complainant failed to provide a telephone number as required by the December 3, 2002 Order and has otherwise failed to contact the Commission as of the date of this Order.

Conclusions of Law

1. Complainant's failure to provide the Commission with a current telephone number where he can be reached for a telephone conference has resulted in an unreasonable delay of this proceeding.
2. The appropriate sanction for Complainant's conduct is dismissal of the matter with prejudice.

Determination

This matter should be dismissed for Complainant's failure to provide the Commission with a current telephone number and for his failure to otherwise prosecute his case.

Discussion

Section 5300.750(e) of the Commission's Procedural Rules (56 Ill. Admin. Code, Ch. XI, §5300.750(e)) permits a recommendation of dismissal whenever a party engages in conduct that unreasonably delays the proceedings. Moreover, the Commission has previously dismissed cases where a party has failed to appear at scheduled hearings and/or provide the Commission with basic information as to where the party can be reached. (See, for example, **Duzmel and University of Illinois**, ___ Ill. HRC Rep. ___ (1995CF2221, March 24, 1999), and **Godla and Chicago Park District**, ___ Ill. HRC Rep. ___ (1998CF0200, March 24, 1999).) Here, Complainant has engaged in such conduct since he has failed to appear at two scheduled telephone conferences and has failed to provide the Commission with a current telephone number even though he was specifically warned that he risked entry of an Order dismissing this case with prejudice for lack of prosecution.

Indeed, Complainant's failure to contact the Commission in the face of an express warning that his case could be dismissed for want of prosecution indicates either that he no longer cares about pursuing his claim or that he agrees that this matter

should be dismissed. In any event, his conduct renders it difficult for the Commission to take any action with regard to this case except to dismiss it. See, for example, **Eglseder and FKG Oil Co.**, ___ Ill. HRC Rep. ___ (1991SF0159, August 12, 1992).

Recommendation

Based on the forgoing, it is recommended that the Complaint and the underlying Charge of Discrimination of Weston Tolbert be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 10TH DAY OF MARCH, 2003